IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Ex.FA.No. 26 of 2007()

AGAINST THE ORDER DATED 04/05/2007 IN EA 29/07 IN EP 33/97. IN OS.129/1996 of FAMILY COURT,KOLLAM

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APPELLANT/PETITIONER:

AMBIKA, D/O.ARJUNAN ACHARI, MUNNAM
PADINJATTATHIL, VADAKKATHIL VEEDU,
THRIKKOVILVATTOM, KANNANALLOOR.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS: RESPONDENTS
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1. MAHALINGAM, S/O.NARAYANAN ACHARI,
VAROOR VADAKKATHIL VEED,
KANNANALLOOR, KOLLAM.

2. SANTHAMMAL, D/O.PANKAJAKSHI,
NEDIYILA VEEDU, KANNANALLOOR, KOLLAM.

R1 BY ADV. SRI.K.M.MOHAMMED KUNHI
R2 BY ADV. SRI.JOHNSON GOMEZ

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

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Ex.F.A. No.26 of 2007

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Dated this the 24th day of October, 2007.

JUDGMENT

Raman, J.

The appellant is the petitioner in E.A. No.29/2007 in E.P. No.33/1997 in O.S. No.129/1996 on the file of the Family Court, Kollam. Pursuant to a money decree obtained by the wife against the husband, the subject matter of the suit was sold in execution and purchased by the decree holder herself. Thereafter she proceeded to take delivery of the property. Then the appellant herein filed present claim inter alia contending that the property belongs to her, that the same was purchased as early as in 1995 and that she is a bonafide purchaser without notice. But the petition, though it was filed under Order XXI Rule 58 of C.P.C., was dismissed by the court below only on the ground that since the property is already sold, no petition will lie under Order XXI Rule 58. It is true that when there is already an attachment and thereafter the property is sold, there is no question of lifting the attachment thereafter. But at the same time the petitioner's contention that she is a bonafide purchaser without notice and whether she has got any claim over the property is a question which she can raise by resisting the

delivery and it is one of the matters certainly will fall within the ambit of Section 47 of C.P.C. and the execution court is bound to decide such questions as a separate suit is barred. According to the appellant, when the Amin came to the property, she has already raised her objections and thus resisted. In the above circumstances, the order impugned in this appeal is set aside and the matter shall be decided on merits. The claim, if any, of the appellant shall be adjudicated after affording an opportunity of being heard to the second respondent herein. The appeal is allowed by way of remand. Parties shall appear before the execution court on 10.12.2007. The court below shall dispose of the matter expeditiously, at any rate, within a period of four months.

P.R.RAMAN
Judge

V.K.MOHANAN
Judge

pms